IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Petition No.24681 of 2004
and
WPMP.No.30026 of 2004

B.Periyaswamy ... Petitioner

Vs.

1.Union of India,
rep.by the General Manager,
Southern Railway,
Chennai.

2.The Dy.Chief Signal-C
Telecommunication Engineer
Microwave/Personnel
Southern Railway, Chennai-23.

3.The Senior District Signal-C,
Telecommunication Engineer
Microwave/Construction
Southern Railway,
More Pevilian,
Old SIAA Buildings,
Chennai.

4.The Registrar,
Central Administrative Tribunal,
Chennai. ... Respondents

* * *

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus calling for the records pertaining to the order of the 4th respondent in O.A.No.220 of 1998, dated 11.8.2004 and the order bearing No.MW/M/156/97, dated 26.3.1997 of the 2nd respondent and the order bearing No.MW/SC/CN/97/6, dated 24.4.1997 of the 3rd respondent and quash the same and consequently direct the respondents to pay the scale of pay of Rs.1200-1800 admissible to Motor Mechanic Grade-II to the petitioner.

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For petitioner : Mr.R.Ramesh

For R1 to R3 : Mr.V.G.Suresh Kumar

* * *

O R D E R

ELIPE DHARMA RAO, J.

The petitioner was initially engaged as Project Casual Labourer with the respondents on daily wages from 28.10.1980 and he was given temporary status with effect from 1.1.1984 and was placed in the scale of Rs.750-940 applicable to Khalasis . When volunteers were called to attend suitability test for the post of Motor Mechanic Grade-II, the petitioner volunteered and passed the trade-test and based on the result of the said trade test, he was promoted, on ad hoc basis, to the Higher Grade i.e. Motor Mechanic Grade-II, with effect from 1.6.1990. Though the said post of Motor Mechanic Grade-II was in the pay scale of Rs.1200-1800 applicable to Highly Skilled Artisan Grade-II, since his scale of pay was not fixed pursuant to his promotion to the Higher Grade, the petitioner filed O.A.No.1135 of 1993 before the Tribunal. The Tribunal, taking into consideration the fact that the petitioner is performing the duties of Motor Mechanic Grade-II and applying the principle of 'equal pay for equal work', has allowed the said Original Application, directing the respondents to pay the pay and allowances in the pay scale of Rs.1200-1800 with effect from 1.6.1990 i.e. from the date when he was promoted on ad hoc basis to the post of Motor Mechanic Grade-II, together with all arrears of pay and allowances. The Review Application filed by the respondents is also dismissed by the Tribunal, by its order dated 24.11.1995. Accordingly, the pay of the petitioner was revised by an order dated 7.12.1995, fixing his scale in the pay scale of Rs.1200-1800.

2. Thereafter, by the Office Order No.MW/SG/CN/96/3, dated 5.2.1996, the petitioner was re-designated as Project Casual Labour 'unskilled' in the scale of Rs.800-1150 with effect from 5.2.1996. This order of re-designation was challenged by the petitioner in O.A.No.181 of 1996 before the Tribunal and the Tribunal, taking into consideration the earlier order passed by it in O.A.No.1135 of 1993, has observed that 'the re-designation could have only been as Project Casual Labour (skilled) and since the matter has already been settled in O.A.No.1135 of 1993, the respondents are barred by principles of constructive resjudicata' and with such observations, the Tribunal has allowed the said Original Application filed by the petitioner, by the order dated 14.8.1997.

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3. Pending disposal of the said O.A.No.181 of 1996 before the Tribunal, by the orders dated 26.3.1997 and 24.4.1997, the respondents have absorbed some staff members, including the petitioner, as Group 'D' Permanent Khalasi. This action of the respondents was challenged by the petitioner before the Tribunal in O.A.No.220 of 1998. Since the said O.A. was dismissed by the Tribunal, the petitioner has filed this writ petition.

4. The term 'casual labour' was defined in sub-para (a) of Para 2001 of the Indian Railway Establishment Manual as follows:

> "Casual Labour refers to labour whose employment is intermittent, sporadic or extends over short period or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily like to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.
>
> a. Casual Labour (Open Line):-
>
> Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day to day working of the Railway system. This includes labour requires for unloading and loading of materials, special repair and maintenance of track and other structures, supplying drinking water to passengers during summer months, (recoupment of man-days lost on account of absenteeism), patrolling of tracks etc. Casual Labour so engaged in the operation and maintenance of railway system is referred to as open line casual labour, as distinct from Project Casual Labour, described in Para (b) infra.
>
> b. Casual Labour (Project): Casual Labour are also engaged on Railway for execution of railway projects, such as new lines, doubling, conversion, construction of building, track renewals, route relay interlocking, railway electrification, setting up of new units etc. Casual Labour so engaged are referred to as 'Project Casual Labour'."

5. We are able to understand that granting temporary status to project casual labourers was introduced in the year 1986 with retrospective effect from 1.1.1981 on the basis of the judgment of the Honourable Supreme Court of India in INDER PAL YADAV AND OTHERS vs. UNION OF INDIA AND OTHERS [(1985) 2 SCC 648] and the respondents have taken the decision in the Railway Board's Letter No.E(NG) II/78/CL/12, dated 14.12.1980, granting temporary status to Project Casual Labourers with effect from 1.1.1981 and reckoning 50% of their temporary status service from 1.1.1981

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upto the date of regularisation as qualifying service for pensionary benefits.

6. In UOI vs. K.G.RADHAKRISHNA PANICKER AND OTHERS [1998 (5) SCC 11[the Honourable Apex has held that 'the benefit of past service as casual labourers will apply only to casual labourers working in open line and not to casual labourers working on a project'.

7. As could be seen from the impugned orders passed by the respondents, the petitioner was absorbed as Group 'D' Permanent Khalasi. But, the petitioner is challenging the same on the ground that at present he is working as Motor Mechanic Grade-II and as per the earlier orders of the Tribunal and therefore he is entitled to the pay scale of Rs.1200-1800. There is no dispute regarding the fact that the petitioner was only a Casual Labour (Project), which is temporary in nature and liable to be dismissed from engagement once the Project is over. Further more, even while the petitioner was promoted on ad hoc basis to the higher grade viz. Motor Mechanic Grade-II, by the Officer No.MW/OB/CN/90/43, dated 16.5.1990, it has been made clear to him that 'the benefits granted are purely as temporary measure and will not confer any claim with regard to seniority, protection of pay, retention etc. at the time of empanelment/permanent absorption.'

8. The learned counsel for the petitioner strenuously argued that the status and pay of the petitioner is protected by way of the earlier orders passed by the Tribunal, which have become final and the respondents are trying to nullify such orders of the Court by administrative orders. In support of his contention, he relied on a judgment of the Honourable Apex Court in STATE OF HARYANA AND OTHERS vs. RAM KUMAR AND OTHERS [(2002) 9 SCC 703], wherein it has been held that 'the administrative orders cannot overturn a judicial order'.

9. There is no dispute regarding the above said proposition held by the Honourable Apex Court. In the case on hand, on both the earlier occasions, the disputes arose when the petitioner was not paid his salary as per his post viz. Motor Mechanic Grade-II but was paid only the scale of Khalasi and when the petitioner was re-designated as Project Casual Labour 'unskilled' in the scale of Rs.800-1150 with effect from 5.2.1996. While on the first occasion, the Tribunal considering the principle of 'equal pay for equal work' has ordered to fix his pay accordingly, on the second occasion, it has opined that the petitioner should have been re-designated as Project Casual Labour 'Skilled', instead of 'unskilled'. But, nowhere it has been held that the petitioner should not be granted a permanent stature like the one

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granted by virtue of the impugned orders, absorbing him as Group 'D' Permanent Khalasi. As has already been adverted to supra, the position held by the petitioner in the Project wing is temporary in nature as against a permanent vacancy, now conferred on him by the respondents.

10. In this backdrop, the question that arises for consideration is 'whether the promotional post enjoyed by the petitioner in the Project wing would vest any right on him while being absorbed as a permanent employee?' Such a question was considered and well answered by the Honourable Apex Court in the above said judgment of the Apex Court in INDER PAL YADAV AND OTHERS vs. UNION OF INDIA AND OTHERS [(1985) 2 SCC 648] as follows:

> "From the documents on record, it is clear that the petitioners have been regularised and continue to hold the substantive posts of khalasi in Group D category in the open line division of the respondents. Their provisional local promotion in the projects cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre, or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed as a particular point of time. No rules have been pointed out to us to justify this claim on the part of the petitioners."

11. In view of the said categorical finding of the Honourable Apex Court, the petitioner cannot claim any right vested on him by virtue of his ad hoc promotion to the cadre of Mechanical Grade-II while he was a Casual Labour (Project), when he is being absorbed into a post.

12. The petitioner claims that even today, he is functioning only as Mechanical Grade-II, but his pay has been reduced. If such is the situation, the respondents are directed to pay the scale of pay of the post of Mechanical Grade-II till the petitioner actually served in that capacity and fix his pay in the cadre of Permanent Khalasi on the date when he actually took charge as Khalasi, pursuant to the impugned orders issued by the respondents and settle all the amount, due to him, if any, within six weeks from the date of receipt of a copy of this order.

13. Since the earlier orders passed by the Tribunal are under different circumstances, as has been explained supra, the petitioner cannot claim that the same will operate as resjudicata on the respondents, since now he is in a better position as Group 'D' Permanent Khalasi than the earlier one i.e. a Casual Labour

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(Project), even though he enjoyed promotion in the said cadre, since being only an ad hoc promotion, which does not confer any right on him.

14. The Tribunal has analysed all the facts and circumstances of the case in their proper perspective and having applied the correct principle of law and following the dictum laid down by the Honourable Apex Court in INDERPAL YADAV AND OTHERS vs. UNION OF INDIA AND OTHERS [(1985) 2 SCC 648], has dismissed the claim of the petitioner in which, for all the above discussions, we are unable to find any illegality or perversity in approach thus calling for our interference.

In the result, this Writ Petition is dismissed confirming the order passed by the Tribunal. No costs. Consequently, W.P.M.P.No.30026 of 2004 is also dismissed.

Rao

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The General Manager,
Southern Railway,
Chennai.

2.The Dy.Chief Signal-C
Telecommunication Engineer
Microwave/Personnel
Southern Railway, Chennai-23.

3.The Senior District Signal-C,
Telecommunication Engineer
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4.The Registrar,
Central Administrative Tribunal,
Chennai.

+ 1 cc to MR. R. Ramesh, Advocate SR No. 63624/07

SJ(CO)
SR/26.10.2007 Order in W.P.No.24681 of 2004

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